

BAIL SLIP

The Appellant (Accused) Viz., Soliammal was directed to be released on bail as per the order of this Court dated 15.10.2004 and made in Crl MP.No.7228/01 in CA.No.966/2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.966 of 2001

Soliammal ...Appellant/ 2nd accused

-vs-

State through the
Inspector of Police
Kodunkaiyoor PS
in Crime No.1591/1997 ... Respondent/complainant

This appeal is filed against the Judgment made in S.C.No.135 of 2000 dated 8.10.2001 on the file of VI Additional Sessions Judge, City Civil Court, Chennai.

For appellant : Mr.K.Ethirajulu
For respondent : Mr.V.R.Balasubramaniam
Additional Public Prosecutor.

JUDGMENT

This appeal has been preferred against the Judgment in S.C.No.135 of 2000 on the file of VI Additional Sessions Judge, City Civil Court, Chennai. The appellant is the second accused in S.C.No.135 of 2000, the mother-in-law of the deceased Vijayalakshmi.

2. The case of the prosecution in brief is that due to cruelty met at the hands of the appellant/A2 and other co-accused/A1, the husband of the deceased Vijayalakshmi and the son of the appellant herein Vijayalakshmi had committed suicide by pouring kerosene and setting ablaze herself on 28.10.1997 at 9.30a.m. The charge sheet was filed against the accused under Sections 498A and 306 of IPC.

3. The learned committal Magistrate, District Munsif-cum-Judicial Magistrate, Thiruvetriyur, while taking the case as PRC No.39/1998 had issued summons to the accused on their appearance copies under Section 207 of Cr.P.C. were furnished to the accused and since the case is exclusively triable by a Court of Sessions, had committed the case to the Principal Sessions Judge, City Civil Court, Chennai from whose file, the said case has been transferred to VI Additional Sessions Judge, City Civil Court, Chennai. The learned Sessions Judge, on appearance of the accused, had framed charges against them under Sections 498A and 306 of IPC and when questioned the accused pleaded not guilty.

4. Before the trial Court, P.Ws 1 to 17 were examined. Exs P1 to P12 were exhibited and M.Os 1 to 7 were marked.

5. P.W.1 is the neighbour of the deceased Vijayalakshmi. According to her, on 28.10.1997 at about 9.00 a.m., she had seen smoke emanating from the bath room of the house of the deceased Vijayalakshmi. On hearing the distress call from Vijayalakshmi, she immediately rushed to the house of Vijayalakshmi and broke open the door of the bath room and found Vijayalakshmi with extensive burn injuries. Immediately, Vijayalakshmi was rushed to the Kilpauk Medical College Hospital, where after admission, she breathed her last at 2.00p.m., Ex P1 complaint was preferred by P.W.1.

5a. P.W.2 is the father of the deceased Vijayalakshmi. According to him, the marriage between Vijayalakshmi and A1 co-accused took place in the year 1995 and at the time of the marriage, he has given 25 sovereigns of gold besides gift articles. After the marriage, Vijayalakshmi began to live happily with her husband A1, who is a bank employee at Tirupur. After his transfer to Triplicane, Andhra Bank, Vijayalakshmi was living with her husband in a joint family along with her mother-in-law A2/ the appellant herein. According to P.W.2, the accused had demanded jewels of Vijayalakshmi for her (A2) second daughter's marriage. When Vijayalakshmi was not amenable to the request made by her mother-in-law /A2 got infuriated and assaulted Vijayalakshmi. According to P.W.2, A2 had criminally intimidated Vijayalakshmi that even after she kills her, there is no one to question the same. He had received a phone call on 28.10.1997 at 9.55a.m., informing that Vijayalakshmi is in serious condition. Immediately, he had rushed to the Kilpauk Medical College Hospital and saw his daughter Vijayalakshmi in precarious condition, when he enquired her about the incident, she could not speak to him and when he mentioned the name one by one to fix the responsibility for the occurrence, Vijayalakshmi nodded her head thrice, when the name of her mother-in-law Solaiammal/A2 was indicated. Afterwards Vijayalakshmi died.

5b.P.W.3 is the mother of the deceased Vijayalakshmi and the wife of P.W.2. She has also corroborated the evidence of P.W.2 regarding the demand of jewels of Vijayalakshmi by A2 at the time of the marriage of second daughter of A2. She had also seen her daughter Vijayalakshmi with burn injuries at Kilpauk Medical College Hospital. According to her, even two hours after the admission Vijayalakshmi breathed her last.

5c. P.W.4 is the brother of the deceased Vijayalakshmi. According to him, after the marriage of Vijayalakshmi with the co-accused A1, there arose a misunderstanding between them, while they were staying at Tirupur and thereafter they went to Avinashi and lived there for about 13 or 14 months. Thereafter, along with A2, A1 was living as joint family. According to him, A1 the co-accused had insisted for joint family. While, he was thinking about the preferring a complaint regarding the cruelty by his sister Vijayalakshmi met at the hands of the accused and co-accused A1, he received a phone call at about 9.55a.m., on the date of occurrence and that he immediately rushed to the hospital along with P.W2 and P.W.3. He has also corroborated the evidence of P.W.2 to the effect that Vijayalakshmi was in precarious condition and when the names of the relatives were told to her in order to fix the responsibility for the occurrence, Vijayalakshmi had noded her head thrice when A2's name was indicated to her.

5d. P.W.5 is the then Sub Inspector of Police, Kodunkaiyoor Police Station. He had registered a case in Kodunkaiyoor Police Station Crime No.1591/1997 under Section 176 of Cr.P.C. on the basis of the complaint preferred by P.W.1. ExP10 is the copy of the first information report.

5e. P.W.16 is the Investigating Officer, who had took up investigation on the basis of the first information report. On 28.10.1997, he had proceeded to the place of occurrence at about 5.30p.m and prepared Ex P2 Observation Mahazar in the presence of P.W.8 and also had drawn a rough sketch Ex P11 in the presence of P.W.8 and another witness. Under Ex P3 recovery mahazar, he had recovered M.O.1 Nylon saree, M.O.2 Jacket, M.O.3 Bra, M.O.4 tiles, M.O.5 bucket, M.O.6 Jug and M.O.7 Match Box. He had given a letter of requisition to the P.A to the District Collector of Chennai requesting him to conduct inquest.

5f.P.W.13 is the the Tahsildar, Tondiarpet of Chennai, who had conducted inquest on the corpse of Vijayalakshmi and issued Ex P7 inquest report and has also submitted Ex P6 report stating that the deceased would have died due to dowry harassment. He has submitted that the said report was prepared only on the basis of the statement of the parents of the deceased. He has further stated that according to the opinion of the Panchayatars, there is

no suspicion in the death of Vijayalakshmi, except that there was occasional family quarrel between the deceased and her mother-in-law. He has noticed 100% burn injuries on the corpse of the deceased.

5g. P.W.12 is the then P.A. to the District Collector, Chennai who had received Ex P6 report along with his report ExP5 to the Deputy Commissioner of Police, Law and Order, Puliyanthopu region.

5h.P.W.9 is the doctor,who had admitted Vijayalakshmi on 28.10.1997 at about 10.30a.m., in the burn ward at Kilpauk Medical College Hospital. According to him, at the time of admission, Vijayalakshmi was conscious and she had given a statement and according to him as per the statement, only due to quarrel between her mother-in-law, she had poured kerosene on her and setting ablaze and that she was suffering from 100% burn injuries and that she died at 2.15p.m., on the same day.

5i. P.W.11 is the doctor in casualty ward, who had admitted Vijayalakshmi on 28.10.1997 at about 10.30a.m., brought by P.W.1 Gangadharan. According to him, Vijayalakshmi was conscious at the time of admission, but she was very weak and there were burn injuries all over her body. Ex P4 is the copy of the accident register.

5j. P.W.14 is the doctor, who had conducted Autopsy on the corpse on 30.10.1997 at 10.05 a.m The doctor has opined that due to burn injuries and shock, the deceased would have died. Ex P9 is the postmortem report.

5k. P.W.16 has examined the witnesses and recorded their statements. P.W.17 is the successor of P.W.16, after completing the formalities, had filed the charge sheet on 23.10.1998 against accused under Sections 498A and 306 of IPC.

6.When incriminating circumstances under Section 313 Cr.P.C.were put to both A1 and A2, they deny their complicity with the crime. On the side of the accused,D.W.1 and D.W.2 were examined. Exs D1 and D2 were marked.

7. The learned trial Judge, after meticulously going through the evidence both oral and documentary adduced before him, has acquitted A1 from the charge levelled against him but convicted A2 under Section 306 of IPC and sentenced her to undergo five years rigorous imprisonment and a fine of Rs.5000/- with default sentence. A2 was acquitted under Section 498A of IPC. Aggrieved by the findings of the learned trial Judge, A2 has preferred this appeal.

8. Now the point for consideration in this appeal is whether the conviction and sentence by the learned trial Judge against the accused under Section 306 of IPC by the learned trial Judge in S.C.No.135 of 2000 on the file of VI Additional Sessions Judge, City Civil Court, Chennai is sustainable for the reasons stated in the memorandum of appeal?

9. Heard Mr.K.Ethirajulu, (Amicus Curiae), learned counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the respondent and considered their respective submissions.

10. The Point:

To warrant conviction under Section 306 of IPC , it is the burden of the prosecution to prove that only due to the abetment of A2, Vijayalakshmi had committed suicide. Abetment has been defined under Section 107 of IPC as follows:

"A person abets the doing of a thing, who-
first:- Instigates any person to do that thing; or

Secondly:- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly:- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1:- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done is said to instigate the doing of that thing".

Even according to the prosecution, at the time of the occurrence, A2/the appellant herein was not present at the house. P.W.1 is the complainant in this case is admittedly a relative of both the deceased Vijayalakshmi and also the appellant herein. It is a definite stand of P.W.1 that Vijayalakshmi never complained of any ill treatment by the appellant, A2 or by her husband A1, the co-accused who has been acquitted from the charges levelled against him by the learned trial Judge against which there is no appeal preferred by the State.

11. The case of the prosecution hinges only on the evidence of P.W.2, P.W.3, and P.W.4, the father, mother and the brother of the deceased Vijayalakshmi respectively. According to P.W.2 and

P.W.4, while Vijayalakshmi was under treatment at Kilpauk Medical College Hospital in the ward, she could not speak, but to fix the responsibility, according to P.W.2 and P.W.4 they have indicated the names of the relatives one by one and when they indicated the name of A2 to Vijayalakshmi, she nodded her head thrice. But P.W.16, the Investigating Officer in his evidence as to the dismay to the case of the prosecution has admitted that during his enquiry, neither P.W.2 nor P.W.3 or P.W.4 have stated that at the time when Vijayalakshmi was taking treatment in the hospital, she had nodded her head thrice to fix the responsibility on A2, when P.W.2, P.W.3 and P.W.4 saw her at the hospital. Under such circumstances, the evidence of P.W.2, P.W.3 and P.W.4 to fix the responsibility on the appellant/A2, to fix she is the abettor of the offence to bring home the guilt of A2 under Section 306 of IPC falls to the ground.

12. yet another piece of evidence available on record is the evidence of P.W.9, the doctor who had admitted Vijayalakshmi on 28.10.1997 at about 10.30 a.m., in the Kilpauk Medical College Hospital in the burn ward. According to the doctor P.W.9, after admission Vijayalakshmi gave a statement and as per the statement, due to the quarrel between her and her mother-in-law, the deceased had poured kerosene setting ablaze her. But unfortunately in this case, the statement said to have been recorded by P.W.9, has not seen the light of the day.

13. It is seen from the evidence of D.W.1 and D.W.2 that Vijayalakshmi was suffering from leukoderma and that she was never subjected to any dowry harassment by the accused at any point of time and that as per Ex D2 after the demise of Vijayalakshmi, all the sreedhana properties were returned back to P.W.2 and P.W.3 to the parents of the deceased Vijayalakshmi. Entirely basing reliance on the evidence of P.W.2, P.W.3, and P.W.4, the learned trial Judge has come to an erroneous conclusion that A2/the appellant herein is guilty under Section 306 of IPC which requires interference from this Court for the reasons stated above.

14. In fine, the appeal is allowed and the conviction and sentence against A2 under Section 306 of IPC in S.C.No.135 of 2000 on the file of VI Additional Sessions Judge, City Civil Court, Chennai is set aside and the accused are acquitted from all the charge levelled against her. Fine amount if any paid, shall be refunded to her. The bail bond stands cancelled.

15. The service rendered by Mr.K.Ethirajalu, the learned Amicus Curiae is recorded with appreciation . The Member Secretary of the Tamil Nadu State Legal Services Authority is directed to pay a sum of Rs.3000/-(Rupees three thousand) only towards his remuneration.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. VI Additional Sessions Judge, City Civil Court, Chennai
2. -do-through the Principal Sessions Judge, City Civil Court, Chennai
3. The Judicial Magistrate, Thiruvottiyur
- 4.-d0- through the Chief Judicial Magistrate, Chengalput
5. The Public Prosecutor, High Court, Madras
6. The Inspector of Police, Kodunaiyoor Police Station.
7. The Superintendent ,Central Prison, Vellore.
8. The Member Secretary,
Tamil Nadu State Legal Service Authority,
High Court Campus, Chennai 104.

+ 1 cc to Mr. L. Ethirajlu, Advocate SR No. 50584

SR(CO)

SR/22.8.2007

Cr1.A.No.966/2001